

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA  
STATE OF CONNECTICUT  
COMMONWEALTH OF MASSACHUSETTS

Plaintiff,

THE HOUSATONIC ENVIRONMENTAL  
ACTION LEAGUE; INC.,-AND THE  
SCHAGHTICOKE INDIAN TRIBE

Plaintiffs-Interveners,

GENERAL ELECTRIC COMPANY,

Defendant.

CIVIL ACTIONS NOS.99-  
30225; 99-30226; 99-30227  
-MAP

**AFFIDAVIT OF CHIEF RICHARD L. VELKY**

I, Richard L. Velky, being duly sworn, depose and state as follows:

I am the Chief of the Schaghticoke Tribal Nation ( "Schaghticoke" or the "Tribe"). In November 1987, I was elected by the Tribe as Chief, for life, pursuant and subject to the provisions in the Tribal Constitution. My duties include running the Tribe and all of its affairs under the direction of the nine member Tribal Council.

2. In October 1997, at a duly noticed **annual** Tribal meeting, I was reelected as Chief, for life, of the Schaghticoke Tribal Nation simultaneously with the adoption of an Amended and Restated Constitution of the Schaghticoke Tribal Nation.

3 The ~~Amended and Restated~~ Tribal Constitution required (consistent with the recommendations of the Bureau of Indian Affairs) that membership in the Schaghticoke Tribal Nation ~~be granted~~ to only those persons who are able to trace their genealogy back to the first recorded Chief of the Schaghticoke Tribe, Gideon Mauwee, or to any other member of the Schaghticoke Tribe shown on the 1910 federal census and that proof of that genealogical descendency be by the submission of a "family tree" and copies of the relevant birth certificates containing the raised seals of the issuing authority.

4. As of the date of this affidavit, there are 312 members of the Schaghticoke Tribal Nation, all of whom have satisfied the requirements for membership contained in the Amended and Restated Tribal Constitution.

5. In 1981, the Tribe first filed its letter of intent to petition the federal government for recognition as a Tribe entitled to federal status and became #79 on the list of petitioning groups. After many years and significant expense to Tribal members, the Schaghticoke's documented petition was filed in 1994 with the Branch of

Acknowledgment and Research (“BAR”). The Tribe’s petition was supplemented by the filing of additional documentation in April 1997 and April 1998. As of this date the documented petition contains approximately 12,500 pages of reports and **primary and secondary** documentation.. The Tribe is **firmly** convinced that it meets all seven of the BAR criteria ~~found in 25 C.F.R. § 83.7.~~ - -

6. The Tribe’s petition was placed on the BAR’s “waiting, ready for active consideration” list in June 1997.

7. At all times, **from** the date of my election as Chief of the Tribe, the Department of Environmental Protection of the State of Connecticut, as State designated overseer of the Tribe, has directed and addressed all communications with the Tribe through me, as Chief.

8. Contrary to the assertions made in paragraph 8 of the **Affidavit** of Gail Harrison dated **May 17, 2000** and filed with this Court as an attachment to the Complaint of the **Intervenors**, the Tribe is responsible for the care and protection of the Schaghticoke Reservation in Kent, Connecticut. (See attached copy of letter from the Department of Environmental Protection addressed to Mr. Richard L. **Velky**, Chief, Schaghticoke Tribal Nation and dated September 23, 1999).

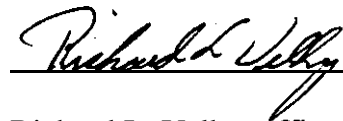
9. The Tribe, in partial fulfillment of this responsibility of “care and protection” of the Tribal Reservation, has taken steps to **apprize** itself of the impact of the proposed “Consent Decree” in the present action by retaining **environmental** experts and consultants for future consultation. (See letter of the Schaghticoke Tribal Nation dated January 4, 2000 addressed to Department of Environmental Protection, a copy of which is attached to Memorandum of the United States in Opposition to Joint Motion to Intervene By Housatonic Environmental Action League, Inc. et **al, in the** instant, action.). The Schaghticoke Tribal Nation supports the proposed Consent Decree and intends to be an active participant in evaluating the remediation program proposed therein.

10. Mr. Michael Burns, the signatory to the Complaint filed by the Intervenor in this action, has not in the past and does not currently represent the Schaghticoke Tribal Nation and is not authorized to represent to this Court that he represents any party or parties who claim to be charged with the responsibility for the “care and protection” of the Schaghticoke Reservation in Kent, Connecticut. The Schaghticoke Tribal Nation strenuously opposes the granting of the Motion to Intervene filed by the Housatonic Environmental Action League and certain individuals claiming to be members of the Schaghticoke Indian Tribe.

Further, the **affiant** saith not.

I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct.

Executed this 13th day of June, 2000, at Southbury, Connecticut.

A handwritten signature in cursive script, reading "Richard L. Velky", is written over a solid horizontal line.

Richard L. Velky, affiant



STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



September 23, 1999

Mr. Richard L. Velky, Chief  
Schaghticoke Tribal Nation  
601 Main Street  
Monroe, CT 06468

Dear Chief Velky:

Thank you for your letter of August 25, 1999. You requested that the Department of Environmental Protection take immediate steps to stop a reservation resident from continuing to build an addition to a house, and to have the land restored to its former condition.

Connecticut General Statutes Section 47-59a(b) states that tribes are "self-governing entities with powers and duties over tribal members and reservations." DEP does not want to interfere with tribal governing authority. We believe this is a matter for the Tribe to handle as a self-governing entity.

CGS Sec. 47-60(b) states that a "tribe shall exercise on reservation land all rights incident to ownership except the power of alienation." Control of development (construction) is a right of ownership. The State would not get involved in such matters unless it rose to the level of affecting our obligation to maintain the reservation in trust for the future.

Although my letter of February 24, 1988 stated that the Harrison family cannot add to their house or garage, there were significant legislative changes in 1989 governing the tribal-state relationship. Two of those changes, CGS Sec. 47-59a(b) and 47-60 are mentioned above in this letter. Under current law DEP believes it is not appropriate to intervene in this matter.

Sincerely,

OFFICE OF INDIAN AFFAIRS

Ed Sarabia  
Indian Affairs Coordinator

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within one hundred rods of the dividing line, he may notify any two selectmen of the town in which such lot is situated or, if it is in more than one town, then one selectman from each town, who shall give written notice to the parties of the time and place of a hearing in regard to such fence; and the proprietor of such lot may, upon the terms named by the selectmen, erect a better fence than is required by law, and the adjoining proprietor shall pay such part of the expense as he would pay for the erection of an ordinary sufficient fence, but shall be allowed the value of his part of the existing division fence appraised by the selectmen. The expense of maintaining such better fence beyond that of an ordinary sufficient fence shall be defrayed by the owner of such lot, who shall also pay the fees of the selectmen. Such selectmen shall make a written certificate of their doings and leave a copy with each proprietor; and the party erecting the fence may recover of the other party the amount to be paid by him if not so paid within thirty days after the erection of such fence.

(1949 Rev., S. 7165.)

## CHAPTER 824

### INDIANS

Secs. 47-57 and 47-58. Resident aliens and French citizens, rights re real estate. When nonresident aliens may hold real estate. Sections 47-57 and 47-58 are repealed.

(1949 Rev., S. 7166, 7167; P.A. 74-60; P.A. 75-211; S. 2.)

Sec. 47-58a. Transferred to Chapter 821, Sec. 47-7a.

Sec. 47-59. Overseer of Indians. Section 47-59 is repealed.

(1949 Rev., S. 7168; 1961, P.A. 304, S. 6.)

See Sec. 47-41 re management of reservations and reservation residents generally.

Sec. 47-59a. Connecticut Indians; citizenship, civil rights, land rights. (a) It is hereby declared the policy of the state of Connecticut to recognize that all resident Indians of qualified Connecticut tribes are considered to be full citizens of the state and they are hereby granted all the rights and privileges afforded by law, that all of Connecticut's citizens enjoy. It is further recognized that said Indians have certain special rights to tribal lands as may have been set forth by treaty or other agreements.

(b) The state of Connecticut further recognizes that the indigenous tribes, the Schaghticoke, the Panticuck Eastern Pequot, the Mashannicket Pequot, the Mohegan and the Golden Hill Pungasset are self-governing entities possessing powers and duties over tribal members and reservations. Such powers and duties include the power to: (1) Determine tribal membership and residency on reservation land; (2) determine the tribal form of government; (3) regulate trade and commerce on the reservation; (4) make contracts, and (5) determine tribal leadership in accordance with tribal practice and usage.

(P.A. 73-660, S. 1, 11; P.A. 89-362, S. 16.)

History: P.A. 89-362 added Subsec. (b) giving recognition of powers and duties of indigenous tribes over tribal members and reservations.

Cons. 176 C. 318, 319, Cons. 180 C. 474, 475, 476.  
Cons. 18 CA 4, 6. Cons. 22 CA 229, 236, 340.

Sec. 47-59b. Indian Affairs Council; composition, duties, executive director, regulations, report. (a) There shall continue to be an Indian Affairs Council, consisting of

## Ch. 824

one representative from each town; to be appointed by the political subdivision shall be further alternate representative. Vacancies unexpired term services there necessary expense of the state and director who is tributed by the

(b) The Indian Affairs Council shall be the council of general assembly of the state.

P.A. 73-660, S.

See Sec. 47-43

subject to confirmation

History: P.A. 74-60 of twenty-five dollars P.A. 75-129 authorizes as of July 1, 1961; P. declaring an emergency in Indian and re city

The Indian Affairs Administrative Fund Cons. 22 CA 229 Subsec. (a) Cons. 18 CA 4, 6

Sec. 47-60.

(a) Any reservation held in trust in portions of Indians any land belong

(b) A tribe power of alienation

(1949 Rev., S. 71

History: P.A. 89-3 in trust and added Sub

A prescriptive right 474, 475, 476.  
Cons. 22 CA 229.

Sec. 47-61. Indian or Indian the general assembly statute of limited Indian lands, or

one representative from each of the following Indian tribes: The Schaghticoke, the Paucatuck Eastern Pequot, the Mashantucket Pequot, the Mohegan and the Golden Hill Paugussett; to be appointed by the respective tribes, and three persons appointed by the governor who are electors within the state but not elected or appointive officials of the state or any of its political subdivisions and are not of Indian lineage. Appointments made under this section shall be for terms of three years. Each Indian tribe may designate from among its members an alternate representative who may serve from time to time in place of its appointive representative. Vacancies on said council shall be filled by the respective appointing authority for the unexpired balance of the term. The members of said council shall be compensated for their services thereon at the rate of twenty-five dollars per day and shall be reimbursed for their necessary expenses. Said council shall provide services to the Indian reservation community of the state and formulate programs suitable to its needs. The council may select an executive director who shall serve at no expense to the state but may be compensated with funds contributed by the tribes.

(b) The Indian Affairs Council shall review the regulations governing Indian affairs in the state of Connecticut and advise the commissioner<sup>a</sup> on promulgation of new regulations. The council shall report annually, no later than September first, to the governor and the general assembly on the activities of the council and the state of affairs of the Indian people in the state.

P.A. 73-660, S. 2, 3, 10, 11; P.A. 74-168, S. 1, 2; P.A. 75-129, S. 1, 2; P.A. 81-375, S. 1, 4; P.A. 89-368, S. 20.)

<sup>a</sup>See Sec. 47-65 re management of reservations and reservation residents and re duties of environmental protection commissioner in connection with reservation management.

History: P.A. 74-168 amended Chapter of council, added representative from Golden Hill tribe and allowed compensation of twenty-five dollars per day where previously council received no compensation but were reimbursed for necessary expenses; P.A. 75-129 authorized tribes to designate alternate representative; P.A. 81-375 amended Subsec. (a) to change terms of office to of July 1, 1994; P.A. 89-368 amended Subsec. (a) by substituting "Paucatuck Eastern Pequot" for "Paucatuck Pequot" and by deleting an obsolete provision concerning trust and deleted Subsec. (d) re qualifications necessary for a person's designation as an Indian and re eligibility for residing on reservation lands and reinserted Subsec. (c) as Subsec. (b).

The Indian Affairs Council is an "agency" within the meaning of Sec. 4-166(1) and is subject to the provisions of the Uniform Administrative Procedures Act, 180 C. 474, 475, 476, 477.

Cons. 22 CA 229, 234.

Subsec. (b):

Cons. 18 CA 4, 6.

Sec. 47-60. Reservation land held in trust by state. Conveyances by Indians void.

(a) Any reservation land held in trust by the state on October 1, 1989, shall continue to be held in trust in perpetuity to prevent alienation and to insure its availability for future generations of Indians. Except as otherwise expressly provided, all conveyances by any Indian of any land belonging to, or which has belonged to, the estate of any tribe shall be void.

→ (b) A tribe shall exercise on reservation land all rights incident to ownership except the power of alienation.

(1949 Rev., S. 7149; P.A. 89-368, S. 21.)

History: P.A. 89-368 amended Subsec. (b) specifying that reservation land held in trust by the state shall continue to be held in trust and added Subsec. (b) re exercise of rights on tribal reservation land.

A prescriptive right of way cannot exist over lands, the conveyance of which is forbidden by law, 51 C. 71, Conn. 1471, 474, 475, 478.

Cons. 22 CA 229, 234.

Sec. 47-61. No title by possession against an Indian. In any action brought by an Indian or Indians for the recovery of lands owned by Indians, or sequestered for their use by the general assembly or by any town agreeably to law, the defendant shall not plead the statute of limitations, except as against an Indian or Indians authorized by law to convey Indian lands, or as against a town authorized by law to convey Indian lands.